

EXHIBIT 5

WEATHERFORD DECLARATION IN SUPPORT OF MOTION FOR SUMMARY JUDGMENT

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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION

IN RE: HIGH-TECH EMPLOYEE)
ANTITRUST LITIGATION)
) No. 11-CV-2509-LHK
THIS DOCUMENT RELATES TO:)
ALL ACTIONS.)
_____)

CONFIDENTIAL - ATTORNEYS' EYES ONLY
VIDEO DEPOSITION OF DANIELLE LAMBERT
October 2, 2012

REPORTED BY: GINA V. CARBONE, CSR NO. 8249, RPR, CCRR

09:21:18 1 Q. With which companies did Apple have such an
09:21:22 2 agreement?

09:21:26 3 A. At various times, Apple had agreements with
09:21:31 4 Adobe, who was a key partner of ours, Google, when the
09:21:36 5 companies were working together, I believe Nvidia and
09:21:44 6 ATI who were designing chips for us. Motorola at the
09:21:52 7 time that we were in partnership over the Rokr phone.
09:22:02 8 I've forgotten who I listed. I'm sorry. I said
09:22:06 9 Adobe -- did I mention Google?

09:22:07 10 Q. You said Adobe, Google, Nvidia, ATI and
09:22:11 11 Motorola.

09:22:12 12 A. Motorola.

09:22:15 13 Obviously any of the search firms that we
09:22:18 14 worked with, the recruiting firms.

09:22:34 15 I'm trying to think if there were any others.
09:22:36 16 I'm sorry.

09:22:38 17 Q. How about Pixar?

09:22:39 18 A. Oh, yes. I'm sorry. I didn't....

09:22:54 19 Q. Did Apple have an agreement with Intuit?

09:23:01 20 MR. RILEY: Objection. The question is vague.

09:23:03 21 MR. SAVERI: Q. And when I say agreement,
09:23:05 22 I'm talking about an agreement not to cold call each
09:23:08 23 other's employees.

09:23:11 24 A. With Intuit?

09:23:12 25 Q. Yes.

09:23:13 1 A. Not that I can recall. We didn't have an
09:23:16 2 agreement with Intuit, necessarily.

09:23:18 3 Q. When you say you didn't have an agreement with
09:23:21 4 Intuit necessarily, what do you mean?

09:23:23 5 A. Well, the chairman of Intuit, Bill Campbell,
09:23:27 6 was a board member -- is a board member of Apple's, and
09:23:32 7 we had an internal policy not to cold call into members
09:23:41 8 of our board's companies.

09:23:45 9 Q. And so was Intuit on the do-not-cold-call list
09:23:51 10 as a result of that policy?

09:23:52 11 MR. RILEY: Objection. Question is vague. No
09:23:54 12 foundation.

09:23:58 13 THE WITNESS: I'm not sure which list you're
09:24:00 14 referring to.

09:24:00 15 MR. SAVERI: Q. Well, did Apple maintain a
09:24:02 16 list of the companies with whom -- with whom it would --
09:24:08 17 Apple was not going to cold call?

09:24:15 18 A. I believe there were a few different lists, not
09:24:19 19 formal lists, but, you know, lists held by the
09:24:22 20 recruiters who worked with various businesses that they
09:24:25 21 knew which companies we were partnering with at
09:24:29 22 different times, which companies to be sensitive to.

09:24:32 23 So if you're asking if Intuit was ever on one
09:24:35 24 of those lists, I would imagine it to be given those
09:24:42 25 positions as the board member.

09:24:43 1 Q. Was Microsoft on one of those lists?

09:24:48 2 MR. RILEY: Objection. The question is vague.

09:24:51 3 THE WITNESS: You're asking if Microsoft was on
09:24:55 4 one of which lists? One of a list --

09:24:58 5 MR. SAVERI: Q. A do-not-call list.

09:24:59 6 A. A do-not-call list?

09:25:10 7 I can't recall exactly, but, you know, thinking
09:25:12 8 back, Microsoft had a Mac division that I can't imagine
09:25:15 9 us wanting to cold call into.

09:25:23 10 Q. Was Garmin on a do-not-cold-call list?

09:25:26 11 Excuse me. Was Garmin on one of Apple's
09:25:29 12 do-not-cold-call lists?

09:25:32 13 A. I can't recall.

09:25:38 14 Q. Was a company called Aspyr on Apple's
09:25:44 15 do-not-cold-call list?

09:25:45 16 A. I can't recall.

09:25:46 17 Q. Was Best Buy on an Apple do-not-cold-call list?

09:25:55 18 A. I can't recall exactly, however, I would not be
09:25:59 19 surprised if it were given they were a very important
09:26:02 20 reseller for us. We actually had our Apple -- we did a
09:26:06 21 deal with Best Buy where we had Apple badged employees
09:26:10 22 in their stores.

09:26:13 23 Q. So to -- and I want to get your best
09:26:14 24 recollection.

09:26:15 25 To the best of your recollection, was Best Buy

09:27:48 1 A. Genentech would have been a company that we
09:27:52 2 were sensitive to and -- from kind of an internal policy
09:27:55 3 standpoint, they fall under our board member's
09:27:58 4 companies.

09:27:58 5 Q. And that is because Arthur Levinson was on the
09:28:01 6 Apple board?

09:28:02 7 A. Yes.

09:28:05 8 Q. Now, we -- you identified Google as one of the
09:28:08 9 companies with whom Apple had an agreement with with
09:28:11 10 respect to do not -- no cold calling, correct?

09:28:15 11 A. Correct.

09:28:18 12 Q. Was Ingram Micro on an Apple do-not-cold-call
09:28:23 13 list?

09:28:24 14 A. I can't recall.

09:28:25 15 Q. Was Intel on an Apple do-not-cold-call list?

09:28:37 16 A. I can't recall exactly, but the Intel
09:28:40 17 relationship, that was a very, very important
09:28:42 18 relationship with us -- or for us. You know, we were
09:28:49 19 importing Intel -- the Intel processor was a big, big
09:28:52 20 deal.

09:28:53 21 We actually -- I think we even had a lab on
09:28:54 22 site where their employees were working with ours in
09:28:57 23 conjunction to develop this technology. So I could
09:29:01 24 imagine, at that time, we would have had a policy not to
09:29:03 25 call into Intel.

09:29:06 1 Q. Did Apple have an agreement with Intel not to
09:29:09 2 cold call each other's employees?

09:29:12 3 A. I don't believe so.

09:29:23 4 Q. Was J. Crew on Apple's do-not-cold-call list?

09:29:28 5 A. Also J. Crew had -- you know, their CEO was a
09:29:31 6 board member of ours, so they would have fallen into our
09:29:34 7 internal policy of not cold calling into board member's
09:29:38 8 companies.

09:29:38 9 Q. And that was because Mickey Drexler was on the
09:29:42 10 Apple board?

09:29:43 11 A. Yes, it was.

09:29:44 12 Q. Did Apple have an agreement with J. Crew with
09:29:46 13 respect to no cold calling?

09:29:52 14 A. No. Not -- no. We did not that I can recall.

09:29:58 15 Q. Was Mac Zone on Apple's do-not-cold-call list?

09:30:04 16 A. Mac Zone?

09:30:04 17 Q. Yes.

09:30:05 18 A. I don't know.

09:30:08 19 Q. Was Nike on Apple's do-not-cold-call list?

09:30:12 20 A. Nike -- you know, we had a policy -- they would
09:30:16 21 have fit into kind of the more policy or at least
09:30:19 22 be-very-sensitive-to list. Because Tim Cook, Apple's --
09:30:26 23 at the time, COO or, you know, when I was there, at
09:30:29 24 least, a COO, joined the board of Nike, and he chaired
09:30:35 25 their compensation committee. So there was obviously --

09:30:38 1 he didn't want to have the appearance of a conflict of
09:30:41 2 interest.

09:30:42 3 And we also worked tightly with Nike around
09:30:44 4 developing the Nike Plus product line. And so, at that
09:30:49 5 time, we were just sensitive to the relationship.

09:30:51 6 Q. So did Apple have an agreement with Nike with
09:30:55 7 respect to no cold calling?

09:30:57 8 A. No. Not that I can recall.

09:31:00 9 Q. And was Nike on Apple's do-not-call list
09:31:09 10 because there was a Nike executive on Apple's board?

09:31:15 11 A. No. There was not a Nike executive on Apple's
09:31:19 12 board.

09:31:20 13 Q. So was Nike on the Apple do-not-call list
09:31:24 14 because an Apple executive, in particular, Mr. Cook, was
09:31:29 15 on Nike's board?

09:31:31 16 A. Correct. In addition to our business
09:31:34 17 partnership.

09:31:37 18 The Nike Plus work was kind of a -- it was a
09:31:41 19 big deal at the time. Nike hadn't really partnered with
09:31:45 20 technology companies before that I was aware of.

09:31:54 21 Q. Was PC Connection on Apple's do-not-cold-call
09:32:00 22 list?

09:32:01 23 A. I do not know.

09:32:02 24 Q. Was PC Mall on Apple's do-not-cold-call list?

09:32:05 25 A. I don't know.

09:33:10 1 A. I don't recall.

09:33:14 2 Q. Okay. Now, you identified, I believe,
09:33:22 3 Genentech and J. Crew as two companies that were on
09:33:28 4 Apple's do-not-cold-call list by virtue of the fact that
09:33:31 5 one of their executives was on Apple's board. Did I get
09:33:36 6 that right?

09:33:37 7 A. Correct. Yes.

09:33:39 8 Q. Were there other companies that were on Apple's
09:33:42 9 do-not-cold-call list for a similar reason or for that
09:33:44 10 reason?

09:33:51 11 A. I have to think through our board members.

09:33:55 12 Excuse me.

09:33:55 13 Q. Sure.

09:34:09 14 A. So, I'm sorry, the two that you had listed
09:34:10 15 was -- were Nike -- I'm sorry. The two that you had
09:34:13 16 listed were J. Crew and Genentech?

09:34:18 17 Q. Yeah.

09:34:19 18 And let me make sure the question is clear for
09:34:20 19 the record.

09:34:21 20 Other than Genentech and Nike, were there other
09:34:26 21 companies who were on Apple's do-not-cold-call list
09:34:28 22 because the executives of those companies were on the
09:34:33 23 Apple board?

09:34:37 24 A. Okay. I thought I heard you say first J. Crew,
09:34:41 25 and then the second time Nike, but I might be wrong.

09:34:45 1 Q. Excuse me.

09:34:45 2 A. I'm just trying to understand.

09:34:46 3 Q. I got -- and I did. I tried to -- I did get it
09:34:49 4 confused.

09:34:49 5 Let me ask the question again. Thank you.

09:34:51 6 Other than Genentech and J. Crew, are there
09:34:55 7 other companies who were on Apple's do-not-cold-call
09:34:59 8 list because the executives of those companies were on
09:35:03 9 Apple's board?

09:35:04 10 A. Yes.

09:35:05 11 Q. And which companies were those?

09:35:08 12 A. From the best of my recollection, as I think
09:35:13 13 through the board members, would be Intuit with Bill
09:35:16 14 Campbell.

09:35:18 15 Q. Okay.

09:35:20 16 A. Google, at the time that Mr. Eric Schmidt was
09:35:26 17 on the board.

09:35:27 18 I'm trying to think through the board members.

09:35:39 19 There may be one or two others. I just -- I'm
09:35:42 20 sorry, I can't remember the companies --

09:35:44 21 Q. Okay. And now let's --

09:35:44 22 A. -- of our board members at that time.

09:35:47 23 Q. Let's talk about kind of the reverse, the Tim
09:35:50 24 Cook situation.

09:35:55 25 A. Right.

09:35:55 1 Q. Were there other companies other than Nike that
09:35:57 2 were on Apple's do-not-cold-call list because an
09:36:01 3 Apple -- an Apple executive was on the board of that
09:36:04 4 other company?

09:36:05 5 A. Yes.

09:36:05 6 Q. And what companies were those?

09:36:09 7 A. That would be the boards that Steve Jobs sat
09:36:14 8 on. So Pixar, Disney, under that umbrella. And I
09:36:29 9 believe that was it.

09:36:44 10 Q. With which of those companies that I've just
09:36:50 11 run through did you personally communicate regarding the
09:36:57 12 do-not-cold-call policy?

09:37:00 13 A. Are you referring to the board member
09:37:02 14 companies?

09:37:03 15 Q. The whole list.

09:37:03 16 A. Any of the companies that you --

09:37:05 17 Q. Yeah.

09:37:06 18 A. -- listed?

09:37:12 19 The only one that I can recall was -- having a
09:37:16 20 conversation with was Pixar.

09:37:35 21 Q. Now, when I asked the question, I did not limit
09:37:38 22 it to conversations, you know, speaking. I just want to
09:37:43 23 make sure that the question is clear. When I used the
09:37:46 24 word communication, I meant both on the telephone, in
09:37:48 25 person, or by email or other means.

09:37:50 1 With that clarification, does that change your
09:37:54 2 answer?

09:37:54 3 A. No.

09:37:57 4 Q. So for example, did you ever communicate with
09:38:00 5 Bill Campbell regarding the subject of Apple's
09:38:06 6 do-not-cold-call list?

09:38:14 7 A. I don't believe so.

09:38:15 8 Q. Okay. And did you ever communicate with any of
09:38:18 9 the folks at Google, Mr. Schmidt, or any of the other
09:38:23 10 people at Google regarding the do-not-cold-call policy?

09:38:29 11 A. No.

09:38:59 12 Q. When was the first time you saw a
09:39:02 13 do-not-cold-call list at Apple?

09:39:15 14 A. I can't recall exactly when it was.

09:39:19 15 Q. Were you the VP of recruiting --

09:39:21 16 A. No.

09:39:22 17 Q. -- when you first saw that -- a
09:39:25 18 do-not-cold-call list at Apple?

09:39:27 19 A. No.

09:39:29 20 Q. Was it before?

09:39:36 21 A. Well, the reason I'm thinking about this is, as
09:39:40 22 a recruiter myself, I kept my own little, you know, hey,
09:39:43 23 be sensitive to these companies just for my own
09:39:46 24 reminding.

09:39:47 25 But in terms of an actual list, I can't recall

10:13:19 1 question. You have the name Chizen there. It should be
10:13:22 2 Mr. Cook.

10:13:30 3 THE REPORTER: I know. I looks different on my
10:13:30 4 screen.

10:13:30 5 MR. SAVERI: All right. All right.

10:13:31 6 THE REPORTER: It's a different color on my
10:13:33 7 screen.

10:13:34 8 MR. SAVERI: Fair enough.

10:13:35 9 Q. Did you have similar discussions with
10:13:37 10 Mr. Moyer, Tom Moyer?

10:13:45 11 MR. RILEY: Objection. That calls for
10:13:47 12 attorney-client privileged conversations. Mr. Moyer was
10:13:51 13 an Apple attorney.

10:13:55 14 MR. SAVERI: So you're instructing the witness
10:14:08 15 not to answer that question?

10:14:09 16 MR. RILEY: Yes. Mr. Moyer was an attorney
10:14:12 17 advising the HR group, and I'll instruct the witness not
10:14:14 18 to answer.

10:14:47 19 MR. SAVERI: Q. When did Apple agree with
10:14:50 20 Pixar not to cold call each other's employees?

10:14:57 21 MR. RILEY: Objection to the form of the
10:14:58 22 question.

10:15:02 23 THE WITNESS: Could you please rephrase the
10:15:03 24 question.

10:15:03 25 MR. SAVERI: Just read it back, please.

10:15:10 1 (Record read as follows: When did Apple agree
10:15:10 2 with Pixar not to cold call each other's
10:15:10 3 employees?)

10:15:23 4 THE WITNESS: I don't know if -- I mean, where
10:15:25 5 I'm tripping up a little bit is, I'm not sure that Apple
10:15:29 6 formally agreed with Pixar not to, you know, cold call
10:15:33 7 each other's employees.

10:15:33 8 I recall a conversation I had with Lori McAdams
10:15:38 9 about executing a gentleman's agreement about Steve
10:15:44 10 Jobs' role within the company in the acquisition of
10:15:49 11 Disney.

10:15:52 12 MR. SAVERI: Q. Did that gentleman's
10:15:53 13 agreement include any understanding regarding an
10:16:00 14 agreement not to cold call each other's employees?

10:16:15 15 A. Yes. I believe we left the conversation that
10:16:19 16 we were not going to cold call each other's employees.
10:16:23 17 Active recruiting would still continue, but there would
10:16:26 18 be no cold calling into each other's employees given the
10:16:31 19 sensitivity between the companies.

10:16:33 20 Q. When you said gentleman's agreement, what did
10:16:35 21 you mean by that?

10:16:38 22 A. A gentleman's agreement, to me, is just kind of
10:16:41 23 a professional business agreement or a common
10:16:45 24 understanding between businesses to act respectively to
10:16:50 25 one another.

10:16:51 1 Q. Did that mean, among other things, that the
10:16:53 2 agreement didn't have to be written down?

10:17:00 3 A. That was never really something that was
10:17:01 4 considered in terms of, like, whether it was written
10:17:05 5 down or not. Didn't matter.

10:17:14 6 Q. Now, did the gentleman's agreement that you
10:17:17 7 reached -- strike that.

10:17:18 8 Just so I'm clear, was it you yourself who had
10:17:21 9 discussions with Ms. McAdams about that subject?

10:17:26 10 A. Yes, it was.

10:17:26 11 Q. Did you recall when those discussions took
10:17:28 12 place?

10:17:33 13 A. I don't recall exactly. I recall it being
10:17:37 14 likely between the 2005-2007 time frame. I need to....

10:17:44 15 Q. And did the gentleman's agreement that you
10:17:47 16 reached with Ms. McAdams have other aspects other than
10:17:53 17 an agreement not to cold call each other's employees?

10:17:57 18 A. No.

10:17:59 19 Q. To the best of your recollection, that was the
10:18:01 20 subject of the gentleman's agreement between you and
10:18:05 21 Ms. McAdams?

10:18:07 22 A. Was not to actively cold call each other's
10:18:10 23 employees but to continue to recruit from them. Yes.

10:18:16 24 Q. Okay. And was that agreement tied to any
10:18:25 25 particular collaborations with the company -- excuse me.

10:18:29 1 Was that agreement tied to any particular
10:18:32 2 collaborations between the two companies?

10:18:36 3 A. Business collaborations you're asking or --

10:18:38 4 Q. Any collaborations.

10:18:41 5 A. Well, depends how you look at it, but, you
10:18:43 6 know, with Steve Jobs being the CEO of the two companies
10:18:47 7 and then through the acquisition of Disney and him
10:18:51 8 coming on the board at Disney, that had to do with why
10:18:55 9 we reached that agreement.

10:18:58 10 Q. Other than with respect to that, were there any
10:19:00 11 other collaborations, any particular collaborations
10:19:03 12 between the two companies that this agreement was tied
10:19:06 13 to?

10:19:08 14 A. I can't recall exactly, but I don't believe so.

10:19:12 15 Q. And did the gentleman's agreement that you
10:19:15 16 reached with Ms. McAdams apply to all employees of the
10:19:20 17 two companies?

10:19:25 18 A. I don't recall exactly, but likely. Especially
10:19:28 19 through the acquisition, you know, we wouldn't know what
10:19:31 20 kind of legal restrictions might have been put on some
10:19:35 21 of their employees and we wouldn't want our recruiters
10:19:42 22 accidentally violating that.

10:19:44 23 Q. So is the answer yes?

10:19:46 24 A. I'm sorry, I need you to repeat the question.

10:19:48 25 Q. Yes.

10:19:48 1 A. I'm so sorry.

10:19:49 2 Q. I'm sorry.

10:19:49 3 Why don't you read the question back, please.

10:20:02 4 (Record read as follows: And did the

10:20:02 5 gentleman's agreement that you reached with

10:20:02 6 Ms. McAdams apply to all employees of the two

10:20:02 7 companies?)

10:20:03 8 THE WITNESS: Yes.

10:20:04 9 MR. SAVERI: Q. And is it fair to say that

10:20:06 10 the gentleman's agreement was not limited by

10:20:09 11 geography in any way?

10:20:12 12 A. I can't recall.

10:20:13 13 Q. One way or the other?

10:20:15 14 A. No. I can't recall.

10:20:16 15 Q. Was the gentleman's agreement limited by the

10:20:20 16 job function of any of the employees of the companies?

10:20:25 17 A. I can't recall exactly.

10:20:27 18 Q. Was the gentleman's agreement limited to any

10:20:32 19 particular product group of the two companies?

10:20:38 20 A. I don't believe so.

10:20:39 21 Q. Okay. Was the gentleman's agreement limited to

10:20:41 22 any time period?

10:20:50 23 A. I don't recall exactly, but I believe it was

10:20:52 24 with respect to the time period around that time frame,

10:20:57 25 2005-2007, during, you know, the acquisition by Disney

10:32:17 1 A. So firstly, I didn't say that I spoke to
10:32:22 2 Mr. Bentley.

10:32:22 3 Q. Okay.

10:32:22 4 A. I said it's likely that I would have.

10:32:25 5 And I honestly couldn't tell you if I had
10:32:27 6 spoken with or communicated with any of the other
10:32:30 7 members of the recruiting team.

10:32:35 8 Q. Did you ever make any written record of the
10:32:38 9 agreement that you had reached with Ms. McAdams?

10:32:44 10 MR. RILEY: Objection to the form of the
10:32:45 11 question.

10:32:48 12 THE WITNESS: Well, you're asking if I made a
10:32:50 13 written record of the conversation?

10:32:52 14 MR. SAVERI: Q. Yeah.

10:32:54 15 A. So did I write down I spoke with Lori McAdams,
10:32:56 16 and this happened? Not that I can recall.

10:33:03 17 Q. Well, okay.

10:33:04 18 And did you write an email to anyone that said
10:33:06 19 in sum or substance, I spoke with Ms. McAdams and this
10:33:08 20 is what we agreed?

10:33:13 21 A. As I said, I really can't remember if I spoke
10:33:18 22 with, communicated with, in any form, you know, our head
10:33:23 23 of recruiting or really any members of the recruiting
10:33:26 24 team.

10:33:27 25 It would have been likely that I would have had

10:33:28 1 a conversation of some form with Mr. Bentley, but I
10:33:32 2 cannot recall doing so.

10:33:33 3 Q. And my question more -- in particular was
10:33:35 4 whether you made any writing where you memorialized or
10:33:40 5 communicated what you and Ms. McAdams had agreed to.

10:33:43 6 A. Understood.

10:33:44 7 The thing is, I don't know how my form of
10:33:46 8 communication, if I had a conversation, was. So I don't
10:33:49 9 recall if it was in an email or if it was a lunch
10:33:53 10 meeting. Not sure.

10:33:57 11 Q. Is it your recollection that you might have
10:33:58 12 written it down and communicated in writing or not?

10:34:02 13 A. No. I have to be candid with you. I've been
10:34:06 14 away from the company for a long time. I just honestly
10:34:09 15 can't remember what form of communication I may have
10:34:14 16 used, if I had passed along the details of the
10:34:20 17 conversation.

10:34:47 18 Q. Now, I asked you earlier this morning about
10:34:49 19 Apple's agreement with Adobe with respect to no cold
10:34:53 20 calling.

10:34:55 21 Do you recall that?

10:34:55 22 A. Yes.

10:34:56 23 Q. Now, did Apple have an agreement with Adobe not
10:35:02 24 to cold call each other's employees?

10:35:08 25 A. At certain times, we had an agreement with

10:35:13 1 Adobe not to cold call each other's employees. We also
10:35:17 2 generally had a policy not to call -- cold call into
10:35:23 3 Adobe, as they were such an important partner to us.

10:35:29 4 Q. What was the difference between the agreement
10:35:31 5 and the policy that you just described?

10:35:34 6 A. Oh, I'm sorry. So the way that I would define
10:35:37 7 a policy is kind of our -- a unilateral practice within
10:35:42 8 our own company, and an agreement would be, you know,
10:35:46 9 something that two companies have agreed upon.

10:35:50 10 Q. And with respect to Adobe, Apple and Adobe had
10:35:53 11 entered into that sort of agreement, correct?

10:35:57 12 A. Yes. I believe there is one point in time when
10:36:00 13 they did enter into an agreement. Adobe, as I said, was
10:36:04 14 a very sensitive partner for us and vital to our initial
10:36:10 15 turnaround.

10:36:12 16 Q. And when was that point in time?

10:36:16 17 MR. RILEY: Objection. The question is vague.

10:36:24 18 THE WITNESS: Are you referring to the time
10:36:25 19 of -- that we had an agreement with Adobe?

10:36:28 20 MR. SAVERI: Q. Yeah.

10:36:28 21 You just testified -- testified yes. I believe
10:36:31 22 there is one point in time when they did enter into an
10:36:34 23 agreement. Adobe, as I said, was a very sensitive
10:36:37 24 partner for us and vital to our initial turnaround.

10:36:40 25 And then I asked you, and when was that point

10:36:42 1 in time.

10:36:44 2 So my question is, when was that point in time
10:36:46 3 in which Apple and Adobe entered into the agreement not
10:36:49 4 to cold call each other's employees?

10:36:53 5 A. I can't remember the specific dates, but I
10:36:56 6 believe it to be in the 2005 to 2007 time frame.

10:37:02 7 Q. And when you say it was in the 2005 to 2007
10:37:05 8 period, do you mean that that's when the agreement was
10:37:08 9 reached or that was the period in time when the
10:37:11 10 agreement was in effect? Or something else?

10:37:20 11 A. I believe your question was when was that
10:37:22 12 agreement put in place.

10:37:23 13 Q. Okay.

10:37:23 14 A. And so my answer was that the agreement, I
10:37:26 15 believe, was put in place somewhere in that time frame.

10:37:31 16 Q. Who made the agreement on behalf of Apple?

10:37:37 17 A. Steve Jobs.

10:37:38 18 Q. Were you involved in any of the discussions --
10:37:42 19 strike that.

10:37:43 20 Do you know who at Adobe Steve Jobs reached
10:37:47 21 that agreement with?

10:37:49 22 A. I believe it was Adobe's CEO, Bruce Chizen.

10:37:54 23 Q. Okay. Did you participate in any of the
10:37:57 24 discussions regarding that agreement?

10:38:01 25 A. Did I participate in the discussions between

10:55:29 1 A. As I believe I said, I don't recall.

10:55:32 2 Q. Okay. And did the agreement between Apple and
10:55:35 3 Google not to cold call each other's employees apply to
10:55:45 4 all product groups of the two companies?

10:55:49 5 MR. RILEY: Objection. The question's vague
10:55:51 6 and overbroad.

10:55:55 7 THE WITNESS: Yeah. I'm not sure exactly what
10:55:57 8 you're referring to.

10:55:58 9 MR. SAVERI: Q. Well, did the agreement
10:56:00 10 between Adobe and Google -- did the agreement
10:56:03 11 between Apple and Google -- let's put it the other
10:56:08 12 way.

10:56:08 13 Was the agreement between Apple and Google
10:56:11 14 limited to any particular jobs or job functions of the
10:56:14 15 two companies?

10:56:17 16 MR. RILEY: Objection. The question's vague
10:56:18 17 and overbroad.

10:56:20 18 THE WITNESS: I believe you're saying was the
10:56:22 19 agreement between Apple and Google not to cold call each
10:56:28 20 other's employees, did it relate to all employees?

10:56:33 21 MR. SAVERI: Q. Yes.

10:56:33 22 A. Well, as I said, unfortunately I don't know
10:56:36 23 because I can't recall the geographic location and
10:56:40 24 things like that and, you know, depended on the nature
10:56:41 25 of the agreement and what, you know, what the

10:56:42 1 circumstances were.

10:56:43 2 MR. SAVERI: Q. Well, and I'm asking you
10:56:44 3 what the -- what your recollection was of the nature
10:56:46 4 of the agreement and those circumstances.

10:56:48 5 A. Uh-huh.

10:56:50 6 Q. So I'm trying to find out if you understood
10:56:51 7 that there were any limitations to the agreement with
10:56:56 8 respect to particular jobs, job functions, job
10:56:59 9 categories.

10:57:03 10 A. The reason why I'm, you know, hesitating a bit
10:57:05 11 is that, you know, with Google there were kind of two --
10:57:08 12 two situations. One being our technology collaboration
10:57:11 13 that we had, the other being Eric as a board member.

10:57:16 14 And, you know, certainly we -- with respect to
10:57:24 15 cold calling, during that time of collaboration and
10:57:30 16 trust, we were not going to cold call one another's
10:57:37 17 employees. Continue to recruit, but I believe the cold
10:57:41 18 calling would refer to -- I guess where I'm tripping up
10:57:46 19 is, cold calling is not normally done with all
10:57:48 20 employees, and so it's difficult to say I would refer to
10:57:53 21 all employees when there's a number of jobs that you
10:57:55 22 would never cold call.

10:57:57 23 Q. Was there any -- well, did the agreement
10:58:01 24 between Apple and Google have any time limitation?

10:58:13 25 A. Well, when the agreement was reached, I don't

10:58:16 1 believe it was, they, okay, we're starting now and
10:58:19 2 stopping then. Because as I said, these things ebbed
10:58:21 3 and flowed.

10:58:24 4 When -- from my recollection, an agreement was
10:58:26 5 reached when the two companies were in strong
10:58:28 6 collaboration with technologies. Eric was a board
10:58:31 7 member. Eric was later no longer a board member. The
10:58:37 8 companies kind of fizzled in their relationships of
10:58:40 9 co-development of products and things and -- as did the
10:58:42 10 agreement.

10:58:42 11 Q. Well --

10:58:43 12 A. It wasn't a fixed turn-on, you know,
10:58:46 13 turn-off-type thing.

10:58:48 14 Q. Well, to the best of your recollection, when
10:58:50 15 did the agreement between Apple and Google end?

10:58:55 16 A. Again, you know, I'm bad on dates. I said I
10:58:58 17 believe it's, you know, in the 2005-2007 time frame. I
10:59:04 18 need to look back as to when it was that Eric stepped
10:59:07 19 down from the board and when the two companies kind of
10:59:09 20 stopped working closely together.

10:59:11 21 Q. So --

10:59:12 22 A. But it fizzled around that time.

10:59:15 23 Q. So when you say -- so it's your testimony that
10:59:16 24 the agreement between Apple and Google ended sometime in
10:59:19 25 the 2005 to 2007 period?

04:09:00 1 A. Yes, you did, that first paragraph.

04:09:02 2 Q. Now, did you discuss with Mr. Jobs on or about
04:09:06 3 this time his communication with Mr. Campbell about Eric
04:09:15 4 Schmidt's efforts to stop Google's recruitment of anyone
04:09:22 5 from Apple?

04:09:26 6 A. Not that I can recall. I haven't seen this
04:09:28 7 email before, and I don't recall a conversation about
04:09:29 8 it.

04:09:33 9 Q. Did you ever talk to Mr. Campbell about the
04:09:36 10 subject of Google's recruiting of Apple employees?

04:09:40 11 A. No.

04:09:41 12 Q. Do you know --

04:09:42 13 A. Not that I can recall.

04:09:43 14 Q. Does this refresh your recollection that
04:09:45 15 Mr. Campbell was involved in communications between
04:09:51 16 Apple and Google regarding recruiting?

04:09:57 17 MR. RILEY: Objection. It's been asked and
04:09:57 18 answered.

04:10:00 19 THE WITNESS: As I said, I unfortunately --
04:10:02 20 this is the first time I've seen this email. I don't
04:10:04 21 know anything about it, so I can't comment on it.

04:10:08 22 MR. SAVERI: Q. And at this time, was
04:10:09 23 Mr. Campbell on Apple's board?

04:10:15 24 A. Yes.

04:10:35 25 Q. Now, at this time, did Apple have its policy in

04:10:39 1 place not to cold call the employees of companies where
04:10:47 2 board members worked?

04:10:53 3 A. No. I believe that's a misstatement of the
04:10:55 4 policy that I mentioned which was that we had a policy
04:10:59 5 not to recruit from our board members' companies.

04:11:02 6 Q. Okay. Was that policy --

04:11:05 7 A. I'm sorry, not to cold call into our board
04:11:07 8 members' companies. We actively did recruit and hired
04:11:12 9 many people from them.

04:11:13 10 Q. Okay. Was that policy in place at this time?

04:11:16 11 A. I don't know for certain. I believe the range
04:11:18 12 that I had given was 2005 to 2007, but I don't know the
04:11:22 13 exact dates, so it's tough to say.

04:11:25 14 Q. Do you believe Mr. Campbell was aware of that
04:11:29 15 policy at this time?

04:11:32 16 MR. RILEY: Objection. No foundation.

04:11:33 17 THE WITNESS: I don't know, and I can't
04:11:35 18 speculate on what he knew or didn't know.

04:11:37 19 MR. SAVERI: Q. Well, was it a -- was the
04:11:39 20 policy of Apple putting -- of -- was Apple's policy
04:11:45 21 with respect to not cold calling employees from the
04:11:49 22 companies of board members something that was
04:11:53 23 disclosed to board members?

04:11:59 24 A. I don't know. I don't remember. It was, you
04:12:07 25 know -- I don't remember ever having that conversation

04:12:09 1 with a board member, but, you know, from our perspective
04:12:13 2 it was really more of a -- it's being respectful to
04:12:19 3 them. It's not putting them in a position of compromise
04:12:22 4 given the information that they know.

04:12:25 5 Q. Well, my question was, did you advise -- did
04:12:28 6 Apple advise those board members that they were subject
04:12:31 7 to that policy?

04:12:32 8 MR. RILEY: Objection. It's been asked and
04:12:33 9 answered.

04:12:35 10 THE WITNESS: So what I had said is that I
04:12:36 11 didn't say anything to them. I don't know if anybody
04:12:39 12 else did. I didn't say anything that I can recall. And
04:12:42 13 I don't know if any other conversations were had with
04:12:45 14 our board members.

04:12:48 15 MR. SAVERI: Q. Do you know if the
04:12:49 16 recruiting staff at the companies of the board
04:12:55 17 members knew that Apple had such a policy?

04:13:00 18 A. I don't know.

04:13:22 19 (Whereupon, Exhibit 277 was marked for
04:13:22 20 identification.)

04:13:22 21 MR. SAVERI: Q. I'm handing you what's
04:13:24 22 been marked as 277 and has the Bates No.
04:13:27 23 231APPLE002149.

04:13:32 24 Do you have that document in front of you?

04:13:33 25 A. Yes, I do.

04:13:35 1 Q. At the top of the document is an email from
04:13:39 2 Eric Schmidt to Steve Jobs dated 13 February 2006.

04:13:44 3 Do you have that in front of you?

04:13:45 4 A. Yes, I do.

04:13:46 5 Q. At this time, was Mr. Schmidt on the Google --
04:13:49 6 excuse me on the Apple board?

04:13:54 7 A. Do you mind if I just quickly read this?

04:13:55 8 Q. Not at all.

04:13:56 9 A. Thanks.

04:14:09 10 You're asking if I knew if Eric Schmidt was on
04:14:13 11 the board of Apple at that time?

04:14:15 12 Q. Yeah.

04:14:16 13 A. I can't recall.

04:14:18 14 Q. Do you know if Mr. Schmidt was the CEO of
04:14:21 15 Google at this time?

04:14:24 16 A. I believe he was.

04:14:25 17 Q. Okay. Now, Jobs writes to Schmidt on February
04:14:28 18 13th, 2006 at 3:15. "Eric, I am told that Googles new
04:14:37 19 cell phone software group is relentlessly recruiting in
04:14:40 20 our iPod group. If this is indeed true, can you put a
04:14:43 21 stop to it?"

04:14:44 22 Do you see that?

04:14:45 23 A. Yes, I do

04:14:46 24 Q. Did you tell Mr. Jobs that at that time?

04:14:49 25 A. I don't recall how that information got to him.

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2 Reporter licensed in the State of California, License
3 No. 8249, hereby certify that the deponent was by me
4 first duly sworn and the foregoing testimony was
5 reported by me and was thereafter transcribed with
6 computer-aided transcription; that the foregoing is a
7 full, complete, and true record of said proceedings.

8 I further certify that I am not of counsel or
9 attorney for either of any of the parties in the
10 foregoing proceeding and caption named or in any way
11 interested in the outcome of the cause in said caption.

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13 the original transcript will render the reporter's
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15 In witness whereof, I have hereunto set my
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17 ___X___ Reading and Signing was requested.

18 _____ Reading and Signing was waived.

19 _____ Reading and signing was not requested.

20

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